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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/341,821 09/01/99 WARING

M CV0244

EXAMINER

HM22/0630

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GHALI, I

ART UNIT

PAPER NUMBER

1615

DATE MAILED:

06/30/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/341,821

Applicant(s)

Waring et al.

Examiner

Isis Ghall

Group Art Unit

1615



☒ Responsive to communication(s) filed on Jun 9, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-10 and 13-19 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-10 and 13-19 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1615

DETAILED ACTION

The receipt is acknowledged of applicants request for extension of time and amendment A, both filed 06/09/2000.

Claims 15-19 have been added per applicants amendment A in paper No. 8.

Claims 1-10, 13-19 are pending in the application and status of the claims are as follows:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmolka, US 4,495,168 ('168).

US '168 disclosed an aerosol gel composition for treating burns or skin abrasions. See the abstract and col.5, lines 1-2.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1615

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-10, 13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Court et al., EP 0 666 081 (EP '081) by itself or in view of Sperry et al., US 5,059,187 ('187).

EP '081 is teaching gel wound dressing comprising material impregnated with a composition comprising :

- a) from about 0.05% to 10% by weight of natural gelling agent;
- b) from about 1.0% to 10% by weight of hydrocolloid;
- c) from about 5.0% to 30.0% by weight of an alkylene glycol and
- d) at least 50% by weight of water.

Art Unit: 1615

The wound dressing is packaged and sterilized. The gel composition of the reference can be extruded in the form of gel onto gauze. See page 2, lines 20-24; page 3, lines 14-18. The gel of the reference has viscosity of 50-800 Pas

However, EP '081 fails to teach the method of making the aerosol vessel.

US '187 is teaching method for providing an aerosol container and method for cleaning the wound including introducing the wound cleaning solution through an opening into a pouch and then the opening is closed by a valve, the container is then sterilized and the propellant is introduced into the can. See the abstract; col.3, lines 1-10; col.5, lines 8-21.

Accordingly, it would have been obvious for one having ordinary skill in the art at the time of the invention to include the gel composition of Court in the aerosol vessel of Sperry, motivated by the teaching of Sperry et al. that the rigid container of the aerosol is adapted to withstand a high pressure (col.2, lines 18-21), with reasonable expectation of success of treating wounds by delivering gel composition from an aerosol vessel.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP '081 in view of US '187 as applied to claims 1-10, 13 and 15-19 above, and further in view of Tipton et al., EP 0 560 014 (EP '014).

The teachings of EP '081 by itself or in view of '187 discussed above failed to teach the treatment of the sinus wound.

EP '014 disclosing a spray apparatus includes a vessel with a dispensing means which can be a valve and nozzle mechanism and it contain a composition which can be administered to

Art Unit: 1615

the skin, mucous membrane of the mouth and the nose (sinuses), tissue injury (wound), or body cavity (sinuses). The composition contains polyethylene glycol and propylene glycol (wound gel disclosed by the applicants). See the abstract; col.5, lines 4-6; col.14, lines 24-35; col.17, lines 25-27; col.22, line 52; col.23, line 8.

It is obvious to one having ordinary skill in the art at the time of the invention to use an aerosol containing the gel composition of EP '081 to treat sinus wound, motivated by EP '014 teaching that sprayed dressing can be applied to body cavities, with reasonable expectation of success of delivering the wound healing gel to the sinuses.

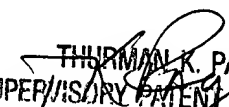
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Isis Ghali whose telephone number is (703) 305-4048. The examiner can normally be reached on Monday-Friday from 8:30 to 5:30 Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Examiner Isis Ghali

June 21, 2000.


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600